

THE HONOURABLE SRI JUSTICE V. ESWARAI AH

WRIT PETITION No.12908 OF 1999

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DATED: 10-10-2007

BETWEEN

Mir Farooq Ali,
S/o. Late Mir Siddique Ali,
Occ: Business,
R/o.H.No.20-3-1132/50,
Dewdi Iqbal-ud-Dowla Shah Gunj,
Hyderabad.

...PETITIONER

AND

The Commissioner,
Survey Settlement & Land Records,
Andhra Pradesh, Hyderabad
and three others.

...RESPONDENTS

ORDER:

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Petitioner seeks a Writ of Mandamus to declare the action of the respondents in seeking to evict him from the house bearing No.20-3-1132/50 consisting of 7 rooms, kitchen and toilet part of Devdi Iqbal-ud-Dowla Shah Gunj, Hyderabad without initiating the proceedings under the provisions of the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short 'the Act') as illegal, arbitrary and consequently to direct the respondents not to evict him without following due process of law.

2. It is the case of the petitioner that the aforesaid house is the property of Paiga Sir Vicar-ul-Umra and the respondents 1 and 2 have got management and supervision over the said property. Originally his father late Mir Siddique Ali was the tenant of the said house and he died in 1976 and thereafter, his

mother became the tenant and during her lifetime she paid monthly rent of Rs.250/-. After her death in 1988 he became the tenant of the said house under the management of the respondents 1 and 2 as they managed the said property under the provisions of the Hyderabad Court of Wards Act. It is stated that the rent has been enhanced vide Notice No.AOP/9/86/91 dated 21.05.1992 of the second respondent enhancing the rent to Rs.438/- with effect from 01.01.1992, which is inclusive of property tax. According to the petitioner, the property tax has to be paid by the respondents and according to the respondents the property tax has to be paid by the petitioner.

3. I am not inclined to express any opinion with regard to the liability of the property tax but the only question that arises for consideration is as to whether the official respondents are entitled to evict the petitioner in exercise of the powers conferred on them under the provisions of the Hyderabad Court of Wards Act alone with following the provisions of the Rent Control Act.

4. It is stated that the petitioner paid admissible rent of Rs.5,000/- on 06.04.1999 and there are no arrears of rent. While so, the third respondent made an attempt on 09.06.1999 and 21.06.1999 to evict him forcibly. Petitioner submits that he is a statutory tenant and the provisions of the Act are applicable and unless the action has been initiated under Section 10 of the Act, he cannot be evicted under the provisions of the Hyderabad Court of Wards Act. The respondents

1 and 2 have got the powers of supervision and management but they have no powers of the civil Court to evict him without following due process of law.

5. Counter has been filed stating that the said house was given on rental lease to the father of the petitioner long ago by the Administrative Officer, Paigah. After his demise, the mother of the petitioner became the tenant and after her death, the petitioner became the tenant of the said house but the rental deed had not been transferred in his name. It is admitted that

the rent has been enhanced in 1992 and that the petitioner deposited a sum of Rs.5,000/- in April 1999 against the rental arrears and the petitioner is still due an amount of Rs.11,000/- towards rent. The petitioner is a defaulter.

It is further stated that the rent of Rs.438/- is inclusive of property tax. It is stated that the Mandal Revenue Officer, Bahadurpura Mandal, has been delegated with the power under Section 32 of the Hyderabad Court of Wards Act 1350 F to evict the unauthorized occupants and therefore, action has been initiated against the petitioner to evict him. It is further stated that the petitioner was evicted from three rooms and he is in occupation of the remaining part of the aforesaid house.

6. If the petitioner is already evicted from three rooms, I am of the opinion that this Court cannot make any order re-inducting the petitioner in the said premises, as there is no such relief sought for in the writ petition. The scope of the writ petition is only as to whether the Tahsildar is entitled to evict the petitioner in exercise of powers under Section 32 of the Hyderabad Court of Wards Act. As per Section 32 it is open for the Court of Wards to summarily evict any person in possession of, or in occupation, in contravention of the provisions of the said Act. Residing in a premises, which was leased out, cannot be said that the tenant is occupying the house in contravention of the Hyderabad Court of Wards Act. Admittedly, the petitioner's father and mother were tenants, if that be so, the petitioner is also a tenant within the meaning of Section 2(9) of the Act. The petitioner being a tenant cannot be evicted without following due process of law under the Act.

The writ petition is accordingly allowed directing the respondents not to evict the petitioner from the premises in question, which he is occupying as on today, without following the provisions of the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960. If the petitioner is already evicted from three rooms, it is open for him to take appropriate steps by approaching the jurisdictional Court of the Rent Controller for restoration of possession in accordance with law. There shall be no order as to costs.

October 10, 2007
DSK

V. ESWARAIAH, J